

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Patrick George,

Plaintiff,

CV-95-4297 (CPS)

- against -

MEMORANDUM
AND ORDER

Judge McLeod,

Defendant.

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SIFTON, Chief Judge

Patrick George, proceeding pro se, brings the instant action pursuant to 42 U.S.C. §§ 1981, 1982, 1983, & 1985, as well as 18 U.S.C. § 242, seeking to enjoin defendant Maureen McLeod, a judge of the Brooklyn family court, from violating the rights of men who appear before her in family court. Presently before the court is defendant's motion to dismiss the complaint. Since plaintiff has not responded to the motion and because the complaint fails to state a cognizable claim for relief, the motion is granted.

BACKGROUND

Plaintiff appeared before defendant in connection with a custody dispute over his children. At the time of the filing of this complaint, plaintiff was incarcerated on Rikers Island. The complaint is silent as to whether plaintiff was incarcerated at the time his case was before Judge McLeod.

In all events, Judge McLeod is alleged to be "bias[ed]," to have failed to advise plaintiff of his rights and to have "violate[d the] law under Judiciary Family Court Acts," and to have "discriminate[d] against men." (Compl. at 3). Other, unidentified men are alleged to have told plaintiff these things about the defendant. Defendant is further alleged not to have enforced plaintiff's visitation rights and to have attempted to terminate plaintiff's parental rights. *Id.* at 4.

The complaint further alleges that plaintiff is "mentally anguished about [defendant's] disregard for [his] parental rights and the rights due [him] under Family Court Acts. Also the pain and suffering of other males I seen disrespected in Family Court by certain Judges and the petition clerks. The whole design is in favor of women. Yet, they quick to force you to pay money to women. But, slow to make sure you see your children or get custody!" *Id.*

As relief, plaintiff asks this Court "to have [defendant] or any other Judge ... refrain from this illegal conduct, violating mens rights and that people can find out about where to make complaints against Judges posted up in Family Court. So that they can complain. Know, where to complain if they feel their rights are being violated." *Id.* at 5.

After putting these allegations in a form complaint apparently provided to inmates on Rikers Island, plaintiff appended five handwritten pages in which he further describes the basis of his complaint. Plaintiff, who spent four years in

prison, describes wishing a better life for his son than he claims to have had himself and describes hearing stories from unidentified others that Judge McLeod is biased and wants to separate fathers and sons. Plaintiff further alleges that Judge McLeod is "conspiring with [plaintiff's] son's mother and [plaintiff] believe[s] Parole and the D.A." Defendant is also alleged to have deliberately misconstrued the law in order to rule against plaintiff.

On October 31, 1997, defendant moved to dismiss the complaint. Plaintiff has not responded.

DISCUSSION

Local Civil Rule 6.1 of this Court requires opposing papers to be filed within ten days of service of a motion. Recognizing that plaintiff proceeds *pro se* in this action and is incarcerated, this court does not hold plaintiff to this strict time limit. Plaintiff, however, has had no contact with the court at all during the months since this motion was noticed. Accordingly, the motion to dismiss is granted as unopposed.

I note that I would reach the same result were plaintiff to have responded. Plaintiff has brought an action seeking injunctive relief ordering the family court to comply with the laws of New York, alleging that the current family court practice violates due process and plaintiff's right to equal protection. To the extent that plaintiff asks this court to intervene in a custody determination made by Judge McLeod with respect to plaintiff's own child, this court is

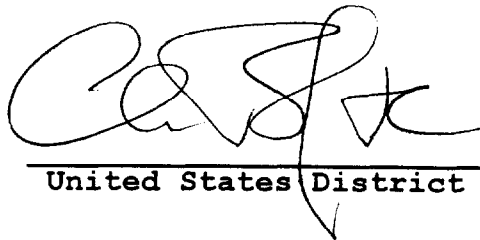
without jurisdiction to grant such relief. The only federal court that may reverse a decision of a state court, including a custody determination, is the Supreme Court of the United States. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 425-16 (1923); *see also District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 485-86 (1983). To the extent that plaintiff asks this court to issue injunctive relief with respect to pending family court cases involving himself or others, this court must abstain from exercising jurisdiction over such a request. Under *Younger v. Harris*, 401 U.S. 37, 59 (1971), a federal court must abstain from exercising jurisdiction when plaintiff's federal constitutional claims could be raised in an ongoing state matter. The requirements of *Younger* are that there be an ongoing state court proceeding, entailing an important state interest, and that plaintiff have an opportunity to raise her constitutional claims during or after the state court proceeding. *See Christ the King Regional High Sch. v. Culvert*, 815 F.2d 219, 224 (2d Cir, 1986). Family court proceedings raise the important state interest of child welfare, *see Moore v. Sims*, 442 U.S. 415, 435 (1979), and any ongoing family court case necessarily proceeds in a court that follows the United States Constitution and can issue injunctive relief. *See Martinez v. Scopetta*, No. 96 Civ. 7580 (LAK), 1997 WL 316714 (S.D.N.Y. June 10, 1997). Accordingly, under *Younger*, this court would have to abstain from exercising jurisdiction over the claims for injunctive relief.

For the reasons set forth above, the motion to dismiss is granted.

The Clerk of the Court is directed to enter judgment dismissing the complaint and to furnish a filed copy of the within to all parties and to the magistrate judge.

SO ORDERED.

Dated : Brooklyn, New York
August 10, 1998


United States District Judge